

TESTIMONY OF  
THE HONORABLE MONTIE R. DEER, CHAIRMAN  
NATIONAL INDIAN GAMING COMMISSION  
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

June 23, 1999

Mr. Chairman, Mr. Vice-Chairman, members of the Committee, my name is Montie Deer and I am the Chairman of the National Indian Gaming Commission (NIGC or Commission). Thank you for the opportunity to appear before you today to testify on National Gambling Impact Study Commission's (Study Commission) final report.

As you know, this report was issued this past Friday on June 18, 1999. At this time, the NIGC has not had ample time to fully review and digest the report. We would appreciate an opportunity to more fully comment on the report's recommendations once we are able to thoroughly analyze the report's contents. Additionally, we would like to comment on the "Survey of Regulatory Practices in the Gaming Industry" submitted by Dr. Amy Bunger Pool. This survey was conducted at the request of the Study Commission and discusses many characteristics of the Indian gaming industry, particularly with regard to regulation.

You have asked me here today to address two issues: (1) the regulation of Indian gaming and (2) the NIGC's disclosure of aggregate tribal revenue figures to the Study Commission.

Indian gaming regulation

Indian gaming has three tiers of regulation: tribal, state and federal. The Study Commission report recognizes the fact that as sovereign governments, tribes provide the first level of regulation for their gaming operations. Indeed, the report recommends that tribal sovereignty should be "recognized, protected and preserved." With respect to state involvement, many Tribal-State compacts provide for some level of state regulation. Finally, the NIGC provides a third level of regulation including (1) monitoring all tribal gaming operations on a continuing basis- (2) approving management contracts; (3) conducting background investigations on management company officials; (4) reviewing and conducting audits of the gaming operations; and (5) initiating enforcement actions to ensure the integrity of Indian gaming operations. We sincerely appreciate the Study Commission's acknowledgment of, and support for, the NIGC's role in regulating Indian

gaming. (Executive Summary Recommendation (E. S. Recommendation) 6.1).

Tribal gaming regulatory authority is often delegated to tribal gaming commissions under the tribes' tribal gaming ordinances which are submitted and approved by the NIGC. They may also be established or delegated authority under Tribal-State compacts entered into to govern Class III gaming. Occasionally, tribes establish their regulatory bodies by other means such as a tribal

resolution or may even change the tribe's governing document, its constitution. Although not mandated by the Indian Gaming Regulatory Act (IGRA), the NIGC works closely with tribes to establish independent regulatory bodies. The NIGC has issued a bulletin which encourages tribes to establish independent tribal gaming commissions and describes our expectations for the regulatory function that those commissions will provide.

I have attached the most recent version of the NIGC's *Report to the Secretary of the Interior on Compliance with the Indian Gaming Regulatory Act*. This report focuses on eight key requirements of IGRA. As you will see the report shows that gaming tribes maintain a strong compliance record.

In January of this year, the NIGC promulgated regulations on Minimum Internal Control Standards (MICS) which are intended to protect and preserve the integrity of Indian gaming. The MICS were drafted to provide protection against potential risk of loss at tribal casinos due to customer or employee access to cash and cash equivalents within the casino -- which is true of any casino. The MICS will reduce the risk of loss to tribal gaming operations because the rule contains, among other things, standards and procedures that govern cash handling and counting, documentation, game integrity, auditing and surveillance. For example, with regard to the game of Bingo, the MICS (1) establish game play standards; (2) restrict access to bingo supplies and equipment; (3) require collection and review of data; and (4) establish standards for linked electronic games. In addition to Bingo, the MICS also establish minimum standards and procedures for Class II and III games such as pull tabs, card games, manual and computerized Keno, pari-mutuel wagering, table games and gaming machines. In short, the MICS provide strict rules which track money from the time it enters the casino, until the time it leaves. All gaming tribes must adopt Minimum Internal Control Standards by August 4, 1999. I appreciate the Study Commission's support of the MICS issued by the NIGC.

As these standards become effective, we intend to emphasize compliance with them as a key aspect of our regulatory program. To meet this challenge we have established a separate Division of Audits as part of the NIGC staff structure and are in the process of hiring auditors experienced

in gaming operations for positions within that division. Under the MICS, the annual independent audit of a tribal gaming operation provided to the NIGC will include comment on that tribal gaming operation's compliance with the NIGC-directed MICS program, as recommended by the Study Commission (Recommendation 6.5).

You should know that many tribes' internal controls already meet or exceed the NIGC's MICS. Just this past week I visited four tribes in Michigan to tour the casinos, including a review of surveillance, count room procedures and other casino regulation. I can tell you first hand that these particular tribes had state of the art surveillance and machinery to conduct the counting of money. I also learned about a cooperative network in which all Michigan gaming tribes share photographs and other information on cheaters and scam artists. Many employees I spoke with had prior experience in the industry and some had been with the operation for close to ten years, since the inception of Indian gaming.

Let me add that I was impressed on my visit to Michigan last week by the tribal infrastructure and programs that have resulted from the revenues of Indian gaming for the tribes in that state. As the Study Commission report concludes, "gambling revenues have proven to be a very important source of funding from many tribal governments, providing much-needed improvements in the health, education and welfare of Native Americans on reservations across the United States." (Final Report at 2- 1 0.) The building of tribal schools, health centers and recreation centers as well as substance abuse programs, elderly and headstart programs and water treatment programs are just a few of the things I observed first hand. I was informed that 10 years ago many of these programs and much of the infrastructure simply did not exist.

To be fair, this is not the case for all tribes. Some tribes which have smaller, less profitable operations may not have sophisticated surveillance or advanced machinery to assist in count room procedures. Indeed, some tribes will be required to expend additional revenues in order to come into compliance with the NIGC's MICS.

With respect to the NIGC's regulatory authority, I would request again that the NIGC be granted licensing authority. Currently, there exists some gaps in the regulatory process because, under the current statutory authority, the NIGC is not authorized to investigate suspect individuals or companies which might be using vending or consulting contracts as a foothold into Indian gaming. The problem is that, because IGRA requires only the approval of management contracts and not the approval of consulting agreements and other similar arrangements, some parties have attempted to circumvent the management contract approval requirements by claiming that they are merely providing consulting or vendor services, or that they are simply lenders attempting to assure that they will be repaid in full. A national licensing system for all individuals engaged in Indian gaming and for gaming related contracts would give the NIGC the ability to scrutinize persons involved in consulting agreements, and similar gaming related contracts and would be an

improvement in our regulatory scheme

#### Release of tribal financial information

In addition to Indian gaming regulation, I wanted to briefly discuss the Study Commission's statement that the NIGC refused to provide information to the Study Commission. (Report at 7-3 -- 7-9). I believe the record is quite clear that the NIGC provided extensive amounts of information to the Study Commission. What we did not produce were complete copies of tribal audits. In September of 1998, prior to my Chairmanship at the NIGC, the Study Commission made a blanket request for individual proprietary tribal audits which tribes must provide to the NIGC pursuant to IGRA. In response to the Study Commission's request for copies of the tribal gaming operation audit reports, we explained in a series of letters dated September 9, October 23, and December 4, 1998, and in a face-to-face meeting with Chairman James, that we are prohibited by the Indian Gaming Regulatory Act from releasing the audit reports except in certain limited circumstances, e.g., when the audits are used for law enforcement purposes.

IGRA provides that -

Except as provided in subsection (b), the Commission shall preserve any and all information received pursuant to this Act as confidential pursuant to the provisions of paragraph (4) and (7) of section 552(b) of title 5, United States Code.

The reference to paragraph 4 in 2716(a) refers to exemption 4 of the Freedom of Information Act which protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." Section 2716(a) thus eliminates the NIGC's discretion to release exemption 4 information. Consequently, because the audit information is confidential information under exemption 4, and that the release of the information could result in substantial competitive harm, we concluded that the NIGC is not authorized to provide copies of the audits to the Study Commission. In addition to the legal restrictions, the confidentiality provisions of IGRA allow the NIGC to efficiently conduct business as tribes are more inclined to provide the NIGC with a full and complete audit of their operations.

Notwithstanding the statutory prohibition of full disclosure of audits, we met and discussed on several occasions, this issue with the Study Commission. Ultimately, NIGC staff met with Study Commission researchers to reach some workable solution to the request. The NIGC and Study Commission researchers finally agreed that the release of aggregate financial information on Indian gaming would satisfy the purposes for which the Study Commission requested the information. On two occasions, December 4, 1998 and April 13, 1999 the NIGC provided aggregate data to the Study Commission. Interestingly, the Study Commission recommends in its

report that the NIG-C compile and present for public release certain aggregated audit information about tribal gaming operations -- the precise solution that the NIGC recommended to the Study Commission, albeit not for public release. In addition to the aggregate financial data, the NIGC produced, among other things, the following additional information to the Study Commission: (1) a list of all tribal auditors used by tribes to conduct audits; (2) NIGC's Report to the Secretary of the Interior on Compliance with IGRA- (3) copies of redacted audits; and (4) copies of NIGC regulations including the NHCS.

I am concerned about the Study Commission's recommendation that the NIGC compile for public release certain aggregated audit information about tribal gaming operations. (E. S. Recommendation 6.5). To the extent the Commission recommends a change in the current law, we do not believe that is necessary. As I stated earlier, we have already provided aggregate data to the Study Commission and believe this to be permissible pursuant to IGRA. However, I have concerns with the vague recommendation made by the Study Commission. For example, the Study Commission does not articulate any sound public policy rationale for the public release of the data as to Indian gaming. In addition, public release in other than aggregate form does have impact on tribal sovereignty. The Study Commission report would otherwise recommend that sovereignty be "recognized, protected and preserved." The public release of tribal financial data seems at odds with this fundamental position. To the extent this Committee recommends any change in the law, we would be happy to work with Committee staff in reaching some resolution.

Under IGRA, we are currently bound to treat such information as confidential and as such, the NIGC has ready access to tribal financial data related to gaming. We receive the annual independent auditors' reports and when we are monitoring or investigating gaming operations, tribal books and records are normally provided without objection. While a legislative change could result in a requirement that we release financial information to the public, I think such a change could have a negative impact on our oversight authority.

Thank you again for the opportunity to present my views on this subject.

REPORT

TO

THE SECRETARY OF THE INTERIOR

ON

COMPLIANCE WITH

THE

INDIAN GAMING REGULATORY ACT

**December 31, 1998**

## **Background**

The National Indian Gaming Commission (NIGC) was created by the Indian Gaming Regulatory Act (IGRA) of 1988 25 U.S.C. § 2701, et seq. The three person commission has the authority to take actions for violations of the IGRA, NIGC regulations and tribal ordinances approved by the NIGC. The mission of the NIGC is to provide fair, firm and consistent enforcement of IGRA's requirements to ensure the integrity of Indian gaming operations.

The NIGC is a small regulatory commission which became operational in 1993. Since that time, the NIGC has processed more than 37,000 investigative reports, more than 60,000 fingerprint cards (currently processing an average of 1600 fingerprint cards monthly) and more than 43,000 employee applications. The NIGC database contains more than 92,000 records pertaining to key employees and primary management officials. This number represents individuals that have been licensed, been denied a license or have had their licenses revoked.

## **Compliance Report**

The NIGC prepares a report for the Secretary of the Interior on tribal compliance with the IGRA. This report is as of December 31, 1998. The report will continue to be updated regularly.

The IGRA imposes many requirements on Indian tribes and their gaming operations. This report focuses on eight key requirements of the IGRA. In reviewing this report, please keep in mind that regulatory compliance is a dynamic concept-- a tribe may be out of compliance initially and come into compliance or may be in compliance and then fall out of compliance. Some compliance factors are ongoing activities, such as the submission of background checks and suitability determinations. Therefore, this report is a "snapshot" in time of tribal compliance and is subject to future changes.

In compiling this compliance report, the NIGC relied on lists prepared by the NIGC, including: a tribal background investigations list, a tribal operations list, a fee assessment list, and an audit compliance list. For compact compliance, the NIGC relied on the Tribal-State Compact List of the Bureau of Indian Affairs (BIA) and NIGC tribal operations lists.

Under IGRA the major compliance obligations for gaming tribes include: (1) obtaining a tribal-state compact approved by the Department of the Interior (DOI) prior to conducting class III gaming; (2)

submitting investigative reports and suitability determinations on each key employee and primary management official summarizing the results of the tribal background investigation; (3) submitting fingerprint cards to the NIGC for processing; (4) submitting gaming employee applications to the NIGC at the commencement of employment 1; (5) adopting a gaming ordinance that has been approved the NIGC; (6) paying a fee assessment to the NIGC based on gaming revenues; (7) issuing a separate license for each facility where gaming is conducted; and (8) submitting an annual independent audit of each gaming operation to the NIGC.

NIGC regulatory requirement.

## **Results**

This report showed gaming tribes to be maintaining a strong compliance record. High compliance percentages were again achieved with regard to the submission of investigative reports and employee applications, the payment of fees, compact approvals, and the submission of annual audits. The percentage of tribes with approved ordinances and the percentage of operations with tribal licenses remained near 100%.

## **Tribal Notification**

Every tribe with a gaming operation has been sent a written notification of the current compliance status of their operation(s) and, where applicable, outlining the specific area(s) of noncompliance identified in this report.

## **Tribal-State Compacts**

IGRA provides that class III gaming activities are lawful on Indian lands only if the gaming activities are conducted pursuant to a tribal-state compact that has been approved by the Secretary of the Interior. 25 U.S.C. § 2710(d)(1)(C). As of December 31, 1998, the Secretary of the Interior has approved 196 compacts with 157 tribes in 24 states. Five California tribes have approved compacts for off-track betting, but are also operating other class III games without the required compact. The information regarding tribal-state compact compliance was obtained from the BIA Tribal-State Compact List and compliance reports prepared by NIGC Field Investigators.

## **Background Investigations**

The IGRA requires Indian tribes to conduct background investigations on their key employees



and primary management officials and to notify the NIGC of the results of the background investigations before issuing a license to those individuals. 25 U.S. C. § 2710(b)(2)(F).

By regulation, the NIGC has established the minimum requirements for background investigations. 25 C.F.R. Part 556. The three components of the background investigation are listed on the chart as separate requirements.

2 Source: Tribal - State Compact List. 11/24/98. This list is maintained and updated by the Indian Gaming Management Staff, Bureau of Indian Affairs, Office of the Commissioner.

1) The NIGC requires tribes to prepare and submit investigative reports on each background investigation. 25 C.F.R. § 556.5. Tribes are required to notify the NIGC of the results of their background investigations before issuing a license to a key employee or primary management official. 25 U.S.C. § 2710(b)(2)(F)(ii)(IH). The report must describe: the steps taken in conducting the background investigation- the results obtained- the conclusions reached; and the basis for those conclusions and eligibility determinations. It is NIGC policy that a tribe may not make its final suitability determination until after the results of the Federal Bureau of Investigation (FBI) criminal records checks have been received by the tribe. The FBI response time averages four to six weeks.

2) The tribe must obtain and review the FBI criminal history record information (CERI) on a potential employee. This information is accessed through fingerprint records. The tribe may process these fingerprint cards through the NIGC or, under certain circumstances, through their State Bureau. 25 C.F.R. § 556.4 (a)(14).

3) Under NIGC regulations, the tribe must submit a completed application for employment to the NIGC when a key employee or primary management official begins work at a tribal gaming operation. 25 C.F.R. § 558.3 (a)(1). To facilitate NIGC's review and to reduce the number of applications on file for individuals employed in tribal gaming operations, tribes have the option of submitting employee applications with the investigative report.

## **Tribal Ordinances**

A tribe that wishes to engage in class U or class III gaming must adopt a tribal gaming ordinance that meets the requirements of the IGRA and NIGC regulations, and that ordinance must be approved by the Chair-man of the NIGC. 25 U.S.C. § 2710(b)(1)(B) and (d)(1)(A). The NIGC has approved 249

gaming ordinances. Tribes with approved gaming ordinances that are not currently conducting gaming are excluded from this report.

### **Fee Assessments**

Tribes engaged in gaming must pay a fee to the NIGC based on a rate established by the NIGC each year. 25 U.S. C. § 2717(a). The rate is applied to the prior year's assessable gross revenues from gaming activities, and the total amount of fees that can be assessed by the NIGC in a fiscal year cannot exceed \$8 million. Gaming operations must pay the fee quarterly. Only gaming operations that have paid their fees for each required quarter are considered to be in compliance. Fees are not required to be paid to the NIGC until the second calendar year that the gaming operation has been open.

### **Tribal License**

The IGRA requires a separate tribal license for each gaming facility on Indian lands. 25 U.S.C. §2710(b)(1). Indianlandsincludealllandswithintheboundaryofafederallyrecognizedtribe's reservation, whether the land is held in fee or in trust.

### **Annual Audits**

Tribes are required to obtain an annual independent audit of the financial statements of each gaming operation on Indian lands and submit to the NIGC a copy of the report. 25 C.F.R. §§ 571.12, 571.13. For this purpose, gaming operations are considered to be in compliance if, by June 30, 1998, they submitted audit reports for the most recent three (3) previous fiscal years.